IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

OP.No. 6314 of 2002(B)

PETITIONER:

C.P.KAMALAKSHY, W/O. LATE P.GOPALAN,
PARAKKOTTIL HOUSE, KUTTANASSERY P.O., OTTAPALAM.

BY ADV. SRI.S.ANANTHAKRISHNAN
SRI.N.K.SUBRAMANIAN

RESPONDENTS:
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1. THE SALES TAX OFFICER, OTTAPALAM.

2. DY. TAHASILDAR (R.R), OTTAPALAM.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 11114 OF 2002 IN OP 6314 OF 2002

DISMISSED

21.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER DATED 24.9.1994 PASSED BY THE FIRST RESPONDENT

EXT. P2 TRUE COPY OF THE ORDER DATED 6.7.2995 PASSED BY THE APPELLATE ASST. COMMISSIONER, PALAKKAD.

EXT.P3 TRUE COPY OF THE ORDER DATED 1.11.2000 PASSED BY THE TRIBUNAL.

EXT.P4 TRUE COPY OF THE MODIFIED ORDER DATED NIL ISSUED BY THE FIRST RESPONDENT.

EXT.P5 TRUE COPY OF THE PETITION DATED 19.11.2002 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P6 TRUE COPY OF THE RECOVERY NOTICE DATED 24.10.2001 ISSUED BY THE 2ND RESPONDENT.

EXT.P7 TRUE COPY OF THE RECEIPT DATED 5.1.2001

RESPONDENTS' EXHIBITS: ;NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 6314 OF 2002

Dated this the 21st day of November, 2007

JUDGMENT

This O.p. is filed against demand of interest for belated payment of tax. Petitioner challenged the assessment in first appeal. Even though first appellate authority allowed the appeal directing revision of assessment at lower rate, Tribunal restored the original assessment in second appeal. Petitioner did not make payment originally or after first appeal, but paid tax after Tribunal confirmed the assessment. Petitioner's case is that interest is not payable during the period between the first appellate order and second appellate order of the Tribunal. Government Pleader on the other hand contended that interest is payable for the total period of default, that is, from the original demand till date of payment as demand is finally sustained. Even though counsel for the petitioner has relied on the decision of this Court in K. NACHIMUTHU V. STO, (1994) 95 STC 539, in support of his case, I do not think this Court should consider the issue on merits, because the Officer himself has not adjudicated this issue, but

assumed that interest is not under contest by the petitioner. In the circumstances, O.P. is disposed of directing the first respondent to consider petitioner's objections, Ext.P5, against demand of interest, hear the petitioner and pass orders within one month from today. Petitioner will produce a copy of this judgment before the first respondent for compliance. The conditional order of stay granted by this Court will continue for two months from now and thereafter recovery will be based on revised order to be issued by the first respondent.

(C.N. RAMACHANDRAN NAIR)
Judge